

fathom that the same abstracts and presentations would have led one skilled in the art to the invention now claimed.

It is further respectfully submitted that mere identification of an insulin transgene as "Ad/(GIRE)<sub>3</sub>BP-1 2xfur" in one or more abstracts or presentations, without disclosing the sequences of the individual elements thereof, could not and would not enable one of ordinary skill in the art to make the claimed constructs without undue experimentation. *In re Impax Labs., Inc. v. Aventis Pharms. Inc.* \_\_F.3d \_\_ (Fed. Cir. 2008) (Decided October 3, 2008), *opinion below*, 496 F.Supp.2d 428 (D. Del. 2007). Therefore, Claims 1-15 are not anticipated by the abstracts and presentations.

### CONCLUSION

For the foregoing reasons, it is respectfully requested that the present Request for Information dated October 29, 2008, be withdrawn, and i) a determination of non-enablement, and thus non-anticipation of Claims 1-15, be made, or ii) the Examiner furnish a written answer to the Applicant's brief.

It is believed that no fee is due for this submission. Should that determination be incorrect, however, the Commissioner is hereby authorized to charge any deficiencies, or credit any overpayment, to our Deposit Account No. 01-0433, and notify the undersigned in due course.

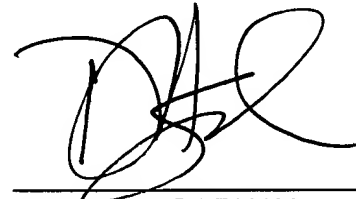
Appl. No. 09/972,916

Response to Request for Information Under 37 CFR 1.105 dated December 16, 2008

Reply to Request for Information Under 37 CFR 1.105 of October 29, 2008

Should the Examiner have any questions or wish to discuss further this matter,  
please contact the undersigned at the telephone number provided below.

Respectfully Submitted,

A handwritten signature in black ink, appearing to be 'DA' with a large flourish, positioned above a horizontal line.

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